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10 Attorneys for Plaintiffs
11 SWINERTON BUILDERS and
12 SWINERTON INCORPORATED
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15 SWINERTON BUILDERS, a California
16 corporation; and SWINERTON
17 INCORPORATED, a California corporation,

18 Plaintiffs,

19 v.

20 AMERICAN HOME ASSURANCE
21 COMPANY; NATIONAL UNION FIRE
22 INSURANCE COMPANY OF PITTSBURGH,
23 PA.; and DOES 1 through 250, inclusive,

24 Defendants.

25 CASE NO. CV 12-06047 EMC

26 **JOINT CASE MANAGEMENT
27 STATEMENT & [PROPOSED]
28 ORDER** Resetting CMC

29 Judge: Hon. Edward M. Chen

30 Courtroom: 5

31 Date: October 3, 2013

32 Time: 9:00 a.m.

33 Trial Date: N/A

34 Complaint Filed: November 29, 2012

35 The parties to the above-entitled action jointly submit this JOINT CASE
36 MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order
37 for All Judges of the Northern District of California dated July 1, 2011 and Civil Local Rule
38 16-9.

39 **1. Jurisdiction & Service**

40 Plaintiffs' allege that jurisdiction in this matter is based upon diversity between the
41 parties pursuant to 28 U.S.C. Section 1332 as there is diversity of citizenship and the matter
42 in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.
43 Plaintiffs bring this an action for declaratory judgment pursuant to the Federal Declaratory

1 Relief Act, 28 U.S.C. Section 2201, for purposes of determining an alleged, actual
2 controversy between the parties. All parties to the action have been served.

3 **2. Facts**

4 Plaintiffs allege that they were the general contractors for the construction of a
5 residential development titled The Essex on Lake Merritt, located at Lakeside Drive and 17th
6 Street in Oakland, California. Plaintiffs contend that Defendants issued two insurance policies
7 that covered the project during the time relevant to Plaintiffs' complaint. The HOA for the
8 project sued Plaintiff general contractors for construction defects. Upon receipt of the claim,
9 Defendants appointed defense counsel for Plaintiffs. The parties attended several mediations
10 in the underlying action. However, the underlying action did not settle prior to the filing of
11 this lawsuit. Subsequently, the construction defect action did settle with Defendants paying
12 for Plaintiffs portion of the settlement under a reservation of rights pursuant to *Blue Ridge*
13 *Ins. Co. v. Jacobsen* (2001) 25 Cal.4th 489. Plaintiffs allege that Defendants had a duty to
14 settle the underlying case earlier and that Plaintiffs have overpaid their \$100,000 deductible
15 for the project resulting in the filing of this lawsuit.

16 In the Complaint, Plaintiffs asserted three causes of action against Defendants: (1)
17 breach of contract - failure to settle; (2) breach of the implied covenant of good faith and fair
18 dealing - failure to settle; and (3) declaratory relief. Upon motion by Defendants, the Court
19 (1) dismissed Plaintiffs' claims premised on Defendants' alleged breach of the duty to settle;
20 (2) granted Defendants' motion to stay this action pending the completion of arbitration; (3)
21 compelled the parties to proceed with arbitration.

22 **3. Legal Issues**

23 This case is stayed pending the outcome of arbitration. (Document 36).

24 **4. Motions**

25 The Court granted Defendants' Motion to Compel Arbitration and granted in part
26 Defendants' Motion to Dismiss. (Document 36).

27 **5. Amendment of Pleadings**

28 This case is stayed pending the outcome of arbitration. (Document 36).

1 6. **Evidence Preservation**

2 This case is stayed pending the outcome of arbitration. (Document 36).

3 7. **Disclosures**

4 This case is stayed pending the outcome of arbitration. (Document 36).

5 8. **Discovery**

6 This case is stayed pending the outcome of arbitration. (Document 36).

7 9. **Class Actions**

8 This case is not a class action.

9 10. **Related Cases**

10 *Swinerton Builders v. American Home Assurance Co.* (Case No. 3:12-04350-SC)

11 11. **Relief**

12 This case is stayed pending the outcome of arbitration. (Document 36).

13 12. **Settlement and ADR**

14 This case is stayed pending the outcome of arbitration. (Document 36).

15 13. **Consent to Magistrate Judge For All Purposes**

16 The parties do not consent to a magistrate judge.

17 14. **Other References**

18 This case is stayed pending the outcome of arbitration. (Document 36).

19 15. **Narrowing of Issues**

20 This case is stayed pending the outcome of arbitration. (Document 36).

21 16. **Expedited Trial Procedure**

22 This case is stayed pending the outcome of arbitration. (Document 36).

23 17. **Scheduling**

24 This case is stayed pending the outcome of arbitration. (Document 36).

25 18. **Trial**

26 This case is stayed pending the outcome of arbitration. (Document 36).

27 19. **Disclosure of Non-party Interested Entities or Persons**

28 This case is stayed pending the outcome of arbitration. (Document 36).

1 20. Other

2 This case is stayed pending the outcome of arbitration. (Document 36).

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4 Dated: September 26, 2013

5 /s/ Charles L. Fanning
6 Joseph L. Oliva, Esquire
7 Charles L. Fanning, Esquire
8 Oliva & Associates, ALC
9 11770 Bernardo Plaza Court, Suite 350
10 San Diego, CA 92128
11 Attorney for Plaintiffs, Swinerton Builders
12 and Swinerton Incorporated

13
14 Dated: September 26, 2013

15 /s/ Marc J. Derewetzky
16 Marc J. Derewetzky, Esquire
17 Trenk DiPasquale Della Fera & Sodono, P.C.
18 1300 Clay Street, Suite 600
19 Oakland, CA 94612
20 Attorneys for Defendants, American Home
21 Assurance Company and National Union Fire
22 Insurance Company of Pittsburgh, PA

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24 CASE MANAGEMENT ORDER

25 The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER
26 is approved as the Case Management Order for this case and all parties shall comply with its
27 provisions. [In addition, the Court makes the further orders stated below:]

28 IT IS SO ORDERED. The Further CMC is reset for 12/5/13 at 10:30 a.m.

An updated Joint CMC Statement shall be filed by
29 Dated: 11/27/13.

